

STATE OF TASMANIA v BRADLEY ROBERT ABEL
COMMENTS ON PASSING SENTENCE

18 May 2022
ESTCOURT J

On 3 September 2020 the defendant, Bradley Robert Abel, pleaded guilty to one count of aggravated burglary, one count of stealing and one count of unlawfully injuring property.

He was 33 years old at the time of the offending. He and his two co-defendants, Stuart and Ty Ferguson, were not known to the complainants.

On 9 July 2019 the complainants, Matthew Tringrove and Sarah Rigney, left Tasmania on a six week holiday.

At approximately 2:28am on 17 July 2019, the defendant and his co-defendants, Stuart and Ty Ferguson, unlawfully entered the property and while inside caused damage and then left, taking with them a large amount of goods and cash to a total value of \$23,400,

The total value of goods (not including Australian currency) stolen from the house was \$30,485.35. Approximately \$15,182 worth of that property was recovered.

The total value of goods (not including Australian currency) that the Crown assert the defendant was responsible for stealing from the house was \$18,082. That property was recovered.

The total value of cash (in Australian currency) that the Crown assert the accused was responsible for stealing from the house was \$5,318. That sum of money was recovered.

Significant damage was caused to the house and personal property during the course of the burglary. The total value of repairs or replacements required was \$16,985.05

The Crown made an application pursuant to s 68(1) of the *Sentencing Act* 1997 for a compensation order in favour of Sarah Rigney and Matthew Tringrove in an amount to be assessed, with the assessment adjourned sine die. I made that order.

The Crown made further application pursuant to s 68(1) of the *Sentencing Act* 1997 for a compensation order in favour of Blue Zebra Insurance in an amount to be assessed, with the assessment adjourned sine die.

The defendant entered a plea of guilty in the Magistrates Court on 15 October 2019.

The State asserted that the offending was a premeditated, planned and targeted offence and that all three of the men physically entered the property and participated in searching for, damaging, and stealing property.

While it could not be asserted which property each defendant physically took or damaged, it was alleged that all three of the defendants were criminally responsible for all items stolen and all damage inflicted as they were all acting together.

I have read a victim impact statement from Ms Rigney. She and her family had to pay for additional flights home to return to their property, and when they did she experienced panic attacks for which she was continuing to receive counselling. She could not live in the house and it was sold.

The defendant has prior convictions for burglary and for stealing and unlawful possession of property, for which he received both suspended and actual sentences of imprisonment.

The Crown made application pursuant to s 27(4)(a) of the *Sentencing Act* 1997 to breach the two partially suspended sentences imposed on 24 May 2018 in the Hobart Magistrates Court.

The defendant was sentenced on that date to two periods of suspended imprisonment totaling five months for a number of summary matters. The defendant showed no cause and did not seek to submit that it would be unjust for me to activate those sentences. Accordingly I did so.

The defendant is a 34 year old Aboriginal man. He is the eldest of four children and prior to being remanded in custody resided in Claremont with his mother and younger brother.

He enjoys a close extended family and although his parents separated when he was 13 years old, both they remain supportive of him. Around the same time his parents separated and his maternal and paternal grandfathers both died and he did not deal well with that.

He did well at school and excelled at sport. He had a good employment record but began drinking heavily and using drugs in 2016. He started using cannabis and drinking alcohol as a 17 year old, although he ceased using Cannabis around that time as his daughter was an infant. He acknowledged he had a methamphetamine addiction and that he used other drugs, and that the offences then before this Court and the Magistrates courts were directly related to his drug addiction. He was "high" on Methamphetamine and did not want to take responsibility for the offences at the time. He had since accepted his guilt.

His partner was not a drug user and was fully supportive of the relationship with the defendant and would continue to support him in his path to abstinence from drug use but would not stand by him if he continued to use illicit drugs and commit offences, as creating a safe and loving home for their son was her priority.

As noted, the defendant has numerous prior convictions for dishonesty offences, burglary and stealing which appear to be at the lower end of the scale of seriousness in value, if not volume. This was his first offence of aggravated burglary.

The defendant had a large number of matters that he had pleaded guilty to before Deputy Chief Magistrate Daly in the Magistrates Court. He was assessed as suitable for a therapeutic Drug Treatment Order in a Court Mandated Diversion Report dated 14 February 2020.

He had entered a plea of guilty in the Magistrates Court to Complaint No 7574/2019, the offence before me on 15 October 2019 and he appeared in this Court on 16 March 2020. It was anticipated that that matter would be dealt with quickly in order for the lower court matters to then be finalised and for him to be sentenced to a Drug Treatment Order.

However, the police file was not completed and subsequently the defendant disputed the particulars on the indictment and the Crown statement of facts. Those issues ultimately resolved without the need for a trial or a disputed fact hearing.

Whilst it was an unintended consequence, had Mr Abel been sentenced earlier 2020 in the Magistrates Court he would not have been sentenced to a Drug Treatment Order due to COVID restrictions which meant there were no services available to support Drug Treatment Order participants. I was told however, that services had been resumed.

Mr Abel had been in custody for 9 months and 4 days. While in custody he had been threatened and assaulted in relation to the offending and was moved to the Huon Unit for his safety. In that unit there was limited outside exercise, no sheets on the bed, no TV, no phone calls except for legal calls and no visits.

I was urged to consider deferring the defendant's sentence under s 7(eb) of the *Sentencing Act* in order to allow him to be sentenced in the lower court to a DTO.

I was inclined to accede to that request. Clearly participation in Court Mandated Diversion Program was a purpose embraced by s 57A(2) of the Act and for the purposes of s 57A(3) the defendant would have served the activated suspended sentences, leaving him with 5 months and some 19 days' time spent in custody available to be taken into account on the deferred sentence.

Accordingly, I ordered that the defendant's sentencing be deferred for a period of 2 years until Friday 2 September 2022 at 4.00pm.

To his great credit the defendant successfully graduated from the CMD program on 3 May 2022, achieving over 550 days drug free.

In all of the circumstances, including the amounts involved, the property recovered and the plea of guilty and of course taking into account his excellent rehabilitation, and the 172 days he has already spent in custody referable to the present matter, I impose a single sentence of 6 months' imprisonment which I wholly suspend on condition that the defendant commit no offence punishable by imprisonment for a period of 12 months.

In taking that course I am conscious that when I sentenced Stuart Ferguson on 21 July last year, the custodial part of the Drug Treatment Order was a period of two years. As to parity however, I note that Stuart Ferguson's record was far worse than the defendant's, and of course if Ferguson successfully completes his Drug Treatment Order he will not be required to serve any part of the custodial part of his sentence, nor will he be subject to a suspended sentence. Whereas the defendant on the other hand has served just over five and a half months in prison, has graduated the CMD process and will be under a suspended sentence for the next 12 months.